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A Report to the 50th Legislature Coal Tax Oversight Subcommittee

November 1986

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THROUGH THE
WINDOW OF OPPORTUNITY
AND BEYOND

REPORT AND RECOMMENDATIONS
OF
COAL TAX OVERSIGHT SUBCOMMITTEE

November 1986

Section 5-18-203, Montana Code Annotated, Requires the
Coal Tax Oversight Subcommittee to Report to and Make
Recommendations to the Revenue Oversight Committee.

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REVIEW OF THE EFFECTS OF THE NEW COAL
PRODUCTION INCENTIVE TAX CREDIT

Section 9 of House Bill 607 (Chapter 636, Laws of 1985) obligated the Coal Tax Oversight Subcommittee with this charge:

Section 9. Coal tax oversight subcommittee to monitor new coal production incentive tax credit. (1) The coal tax oversight subcommittee established in 5-18-201 shall review the effects of the new coal production tax credit provided in [section 3] during the 1985-86 legislative interim. This review shall include but not be limited to:

- (a) the effect of the tax credit on:
 - (i) coal production generally;
 - (ii) the number and term of new agreements and extensions of existing agreements;
 - (iii) the retention or increase of Montana's present level of production;
 - (iv) the current and future markets for Montana coal in and out of the state;
 - (v) the physical, social, and economic environment;
- (b) the extent to which the tax credit is claimed by or awarded to coal mine operators who are not entitled to it; and
- (c) any other factors which may affect either present or future severance tax revenues to the state of Montana.

(2) The coal tax oversight subcommittee shall investigate and conduct periodic hearings for the purpose of gathering information on (1)(a) through (1)(c) above.

(3) The coal tax oversight subcommittee shall report its findings and recommendations to the revenue oversight committee during the

interim, and the revenue oversight committee shall keep the legislature informed of the subcommittee's findings and present a report and recommendations to the legislature.

In recognition of the gravity of this responsibility, the Subcommittee made particular effort to inform itself of all developments within the coal industry impacting on present and future production from Montana mines.

With cooperation from the coal producers, purchasing utilities, transporting railroads, and other private individuals and entities, the Subcommittee was provided and considered all information outside the confines of contractual privity. From the realm of academe, the Subcommittee sought out the advice of scholars who have concentrated their attention on the problems of the coal industry. From a privately endowed foundation regarded as a leader in research in the field of land policy and natural resource utilization, the Subcommittee received counsel both disinterested and informed. From every agency of state government concerned with policy formulation, tax administration and collection, and involved in implementation of programs financed by the proceeds of the coal severance tax or earnings of the trust funds, the Subcommittee enjoyed prompt response to its inquiries.

At each of its seven meetings, the Subcommittee devoted at least a portion of its deliberations to the review of the New Coal Production Incentive Tax Credit. One meeting in the judicious environs of the old Supreme Court room was conducted as a formal hearing on the subject, and during the subsequent meeting follow-up discussions were heard.

The information elicited during this process of almost 16 months duration is abstracted in other portions of the text of this report and is recorded in its entirety in the minutes of the meetings and their attachments and in the other documents reposing in the Subcommittee's records.

After hearing the presentations by concerned persons, reviewing all the information gathered, discussing the facts, and after thoughtful deliberation, the Coal Tax Oversight Subcommittee arrived at the findings listed below and developed the subsequent recommendations which it respectfully presents to the Revenue Oversight Committee and to the entire membership of the 50th Legislature.

FINDINGS

- (1) After careful consideration of all the relevant information, the Subcommittee was unable to find conclusive evidence that the New Coal Production Incentive Tax Credit was the sole determining factor in the awarding of any new contracts for future coal production to a Montana mine, but the Subcommittee was advised that the Incentive Tax Credit was a significant element in the successful negotiation for one sale. Unanimity of opinion about the effectiveness of the Incentive Tax Credit was lacking in the testimony heard by the Subcommittee, and the members consequently arrived at differing conclusions about the value of the Window of Opportunity in stimulating the coal industry in this state.
- (2) The Department of Revenue reported no technical difficulties in the administration of the New Coal Production Incentive Tax Credit, and the Subcommittee was not advised of and had no reason to suspect any abuses of the tax credit provisions of the law.
- (3) The Subcommittee was convinced by the evidence presented and the testimony heard of a deleterious effect, manifested in discrimination, inequity, and inconsistency, of a two-tier system of taxation of the same product.

RECOMMENDATIONS

As consequences of the findings noted above, the Coal Tax Oversight Subcommittee respectfully recommends to the Revenue Oversight Committee and to the 50th Legislature:

- (1) Extension of the New Coal Production Incentive Tax Credit beyond the June 30, 1987, termination provided in Chapter 636, Laws of 1985, for a lifespan not of a precise calendar period but that will terminate upon the achievement of other criteria found by the Legislature to be appropriate.
- (2) Systematic exploration of alternative methods of taxation of coal production including but not limited to:
 - (a) a proposal consisting of two parts:
 - (i) a gross receipts tax at or near the level of the Wyoming severance tax for an effective tax rate of about 13-1/2% to be paid by all coal producers,
 - (ii) a net receipts tax with an effective rate of about 16-1/2% applicable only to producers who make a profit on coal mined in Montana, and
 - (iii) the total of the two parts, which would cause no major change in revenue; and
 - (b) a consistent tax rate on all coal mined in Montana.

LEGISLATIVE RECOMMENDATIONS

After more than 16 months during which the Coal Tax Oversight Subcommittee

- (1) conducted an exhaustive review of the programs financed by the proceeds of the coal severance tax or by the earnings of the trust funds accumulated from those proceeds,
- (2) studied the competitive relationships of the regional coal industry including the impacts of transportation costs,
- (3) considered the significance of the coal industry in the Montana economy, and
- (4) pondered the record of past collections and the projection of future collections of the coal severance tax,

the Subcommittee respectfully recommends that the 50th Legislature enact into law these bills:

LC 95 - The Beach-Wibaux Plant Impact Assistance Interstate Compact to complement the law enacted by the North Dakota Legislature in 1985.

LC 225 - An act to revise the provisions for repayment of Coal Board loans.

LC 226 - A housekeeping act to revise language in other titles relevant to use of coal severance tax proceeds that does not conform

with section 15-35-108, MCA, which allocates money to specific uses.

LC 266 - An act to authorize use of a portion of coal severance tax proceeds for research and development with the allocation divided among technology investments in technology development projects, a Montana coal laboratory within the Montana University System, and a center for future studies within the Montana University System.

SYNOPSIS OF THE SUBCOMMITTEE'S
RESEARCH AND ANALYSIS

CONDITION OF THE COAL MARKET

The optimistic predictions of the mid-Seventies which foresaw Montana's coal production and sales soaring to satisfy the energy appetite of a booming world economy have failed of realization, and during none of the years of this decade has the state's net output approached the 34,424,974 tons mined in the 12 months ended in March 1980.

From a peak of \$86,186,886 in fiscal year 1982, coal severance tax collections dipped for two years but rebounded in fiscal 1985 to the historic high of \$91,748,856. When the 49th Legislature considered the budget for this biennium, the prospects were for steadily increasing collections well beyond the \$100 million level.

The actuality was, however, that a combination of circumstances--including plunging oil prices, invasion of the state's traditional market area by cheaper but higher quality coal from Wyoming whose movement is facilitated by new and shorter railroad lines, a surplus of electrical energy, and a loss of sales volume formerly going to premium paying customers--caused sharp declines in production volumes and a shortfall in severance tax collections for fiscal 1986 of more than \$7.5 million from the previous year and a drop of more than 13% in collections in the first two quarters of fiscal 1987 from the comparable period in 1986.

In the past two years, the effects of the declining severance tax revenue, which slowed the growth of the Permanent Coal Tax Trust and lessened the shares of the 11 accounts that receive fractional allocations, were compounded by the weakening interest rates that sharply reduced the rate of earnings of the trust. The result reduced income to the state general fund, the recipient of 85 percent of the trust's earnings.

This "double whammy" shares with the agricultural crisis and the oil debacle--and the weakening economy they contribute to--the blame as the root causes of the revenue deficit plaguing the state. Slight comfort is found in the knowledge that the other energy states are similarly starving as their customary diets of oil taxes and coal taxes shrink. Particularly hard hit are Texas, Louisiana, Arkansas, Alaska, North Dakota, and Wyoming.

The 49th Legislature, at the request of the Governor, enacted the New Coal Production Incentive Tax Credit in response to the coal industry's argument that Montana's 30 percent severance tax rate stifled growth.

In essence, the Governor said to the coal industry, "Here's your Window of Opportunity. Now climb through it."

The Window of Opportunity opened on January 1, 1985, and will close on June 30, 1987. During those 30 months any new contracts for the sale of Montana coal or any incremental sales on existing contracts above the base consumption or base production levels qualify for credits of one-third of the statutory severance tax rate.

With more than three-fourths of the Window of Opportunity period expired, the experiment has not been notably successful, although one major long-term contract for the purchase of Montana coal was attributed to the delivered cost reduction afforded by the Incentive Tax Credit.

Of particular concern is the fact that six major contracts comprising more than one-fifth of Montana's coal production will expire before 1994, and contracts for about one-third of the state's production will expire before 1999.

In the current conditions, the lowered production has caused reductions in forces at the mines and less demand for rail transportation with concomitant reductions in employment of train crews. Overall, the State Department of Labor and Industry estimates production slowing in bituminous coal mines ripples through the Montana economy in a derivative effect compounded by an employment multiplier of 2.5 and a wage multiplier of 1.8 (e.g., 200 jobs lost in basic industry means another 300 jobs lost in other occupations; and \$7,000,000 of lost bituminous coal wages means another \$5,600,000 lost to the entire state economy).

While the Incentive Tax Credit has not enticed a rush of potential purchasers through the Window of Opportunity, during its first year, when many coal buyers were switching to low cost coal or opening their distribution systems to inexpensive hydroelectric power from Canada, the new law resulted in the production of about a million tons of Montana coal in 1985 that would otherwise still repose in its birthplace.

The first significant success for the Incentive Tax Credit was announced August 27, 1986, when Westmoreland Resources, Inc., revealed the signing of a 20-year contract with Western Fuels Association, Inc., for 700,000 to 1,200,000 tons of coal per year from its Absaloka mine in Big Horn County for Southern Minnesota Municipal Power Agency's 41 percent share of the Sherco III power plant. The other 59 percent of Sherco III is owned by Northern States Power Company, which has not yet contracted for its share of the fuel for the 800 megawatt power unit.

Eligibility for the Incentive Tax Credit was cited by Westmoreland as the decisive factor in closing the deal with Western Fuels, but the contract allows a market opener every three years starting in 1991, which means that the price must remain competitive during the life of the contract, and includes a cancellation clause triggered by any increase in state taxes.

During the first 18 months of the Window of Opportunity, new coal sales, by Montana producers and purchasers, included:

Decker Coal Co. to Commonwealth Edison of Chicago, 1.5 million tons in 1985 and 1.5 to 3 million tons in 1986, 1987, and 1988, coal from existing contracts with Kiewit Company formerly scheduled for Wyoming mines.

NERCO Coal Co. (Spring Creek Mine) to Detroit Edison Company, spot sale, 600,000 tons or more in 1986, amount eligible for tax credit was uncertain.

Western Energy Co. (Rosebud Mine) to AEM Corporation, 225,000 to 350,000 tons per year beginning when the coal liquefaction plant is completed near Colstrip, 15-year contract with renewal option.

Western Energy Co. (Rosebud Mine) to Northern States Power Company, existing contract extended from 1995 to 2000, with authorized deliveries 1.1 million tons per year above current contract with tonnage above base consumption level eligible for tax credit.

APPRAISALS OF THE EFFECTIVENESS OF THE INCENTIVE TAX CREDIT

To understand fully the prospects for the future of the Montana coal industry, this Subcommittee solicited opinions and advice from all viewpoints and sought out an experienced disinterested observer for comments uncontaminated by parochial political or economic considerations.

The objective was to test the validity of arguments that the margin of difference between the neighboring states' coal severance tax rates creates a competitive advantage for Wyoming that will ultimately deprive Montana of its traditional markets and cause the demise of its coal industry. The 49th Legislature, at the request of the Governor, acknowledged the existence of a competitive imbalance which it attempted to counterweight by allowing an Incentive Tax Credit for coal purchased in accordance with provisions of the act. The 49th Legislature also charged this

Subcommittee with monitoring and reporting on the effectiveness of the Incentive Tax Credit.

The severance tax rate is not, however, the sole component of the judgment on the market competitiveness of Montana and Wyoming coal. Other factors include mining costs, royalty payments, local taxes, distance to markets, freight rates, and quality and energy content of coal. These factors vary from mine to mine and between destinations and purchasers.

Evaluation of these interrelationships is necessary to determine the degree of importance of the Incentive Tax Credit in the coal purchasing decisions.

Duffield-Silverman Appraisal

After weighing all factors, Professors John Duffield and Arnold Silverman of the University of Montana concluded in their Update of the Montana Coal Market to the Year 2000:

In all likelihood most of the existing contracts with Montana producers that will expire in the 1993-95 time period will be renewed, even if tax rates are reestablished at the pre-HB 607 levels...

Based on industry sources and discussions, the Montana coal industry will continue a steady growth rate after recovery from the downward economic turn of the past year and a half...As the economy recovers and the electric utility market returns to projected growth rates, we will see coal production in

Montana reach 42 million tons per year (mtpy) and 46-48 mtpy in 1995...Our most likely forecast is that by the year 2000 Montana coal production will reach levels of between 60-65 mtpy, adding approximately 30 million tons to Montana's current production level...

We believe that continuation of the severance tax reduction in all probability will not generate sufficient increased production to offset tax revenue losses on new production...

In the long-term however, we forecast that revenue losses for new production will rise from \$10 million per year in 1990 to \$35 million per year in the year 2000, with a 50% reduction in the Montana severance tax. This same tax reduction on all Montana coal will amount to a loss for the state of \$58 million per year in 1990 and \$83 million per year in the year 2000. Our analysis shows that we cannot increase coal production in the next 15 years by an amount that would compensate for the reduced tax revenue flow to the state caused by a significant reduction in the severance tax.

Business Research Bureau's Viewpoint

Factors leading to somewhat different conclusions were cited by Professor Paul Polzin of the University of Montana's Bureau of Business and Economic Research in Montana's Troubled Coal Industry: A 1986 Update.

These recent developments affecting the Montana coal industry were outlined:

Coal prices: Wyoming's published prices are \$6.25 a ton, F.O.B. mine, but other available information points to a price of \$5 a ton. In Montana, the Northern Powder River Basin coal mines have published prices of \$9.75 a ton, F.O.B. mine.

Compliance coal: To decrease incidence of acid rain, midwestern states are establishing limits to sulfur dioxide (SO_2) emissions that increase the attractiveness of low sulfur coal which is available in Montana only from the Decker and Spring Creek mines to match the content of Wyoming coal.

Declining oil prices and availability of Canadian hydro power: The demand for coal is depressed because of switching to idle oil-fueled plants and purchases of excess Canadian hydro power by midwestern utilities. These cuts to current customers cause volumes to fall below historic levels and make them ineligible for tax credits under the Window of Opportunity on incremental sales.

Railroad competition: Although rail rates to the Upper Midwest for both Montana and Wyoming mines have declined, the decreases tend to improve Wyoming's competitive position because they cause larger reductions for that state's longer rail haul distances.

Flexible coal purchasing agreements: The depressed coal markets and the overcapacity at the mines allow certain large purchasers to develop supply systems using alternative sources. After signing contracts with both Montana and Wyoming mines allowing optional purchases, the buyer may satisfy his annual needs at minimum cost by choosing from the various mines.

The declining base of long-term contracts, Professor Polzin told the Subcommittee, is not a factor in evaluating the impact of the Incentive Tax Credit because the law does not apply to existing contracts and is not responsible for the deteriorating market. The Incentive Tax Credit appears to be working. An example is the contract for 41 percent of the Sherco III fuel awarded to Westmoreland. However, it should be noted that long-term contracts may be uncommon in the future when utilities may find the spot market a more advantageous source.

A more sanguine appraisal of the effectiveness of the Incentive Tax Credit was voiced by John C. Brower, Associate Professor of Mineral Economics at Montana College of Mineral Science and Technology, who told the Subcommittee that successful negotiation of even one small contract is a positive sign (Brower's statement was written in July before announcement of the Sherco III contract with Westmoreland). He emphasized the effects of the law of supply and demand and argued that higher price in the market place reduces sales.

Professor Brower advocated retention or enhancement of the Incentive Tax Credit to make Montana coal more saleable.

Montana's Hostile Reputation

Regardless of justification or lack of it, Montana is reputed to have an unfavorable business climate and a hostile tax system. Nevertheless it would be unwise to "give the store away" in an effort to reverse that perception.

With this nutshell appraisal, Dr. Will Knedlik, Director of Intergovernmental Programs for Lincoln Institute of Land Policy, commented that since Montana enacted its 30 percent severance tax in 1975, the world energy shortage has turned into surplus with the result that the high tax rate and high freight rates have become disincentives to coal sales.

Dr. Knedlik suggested that substantial changes will occur soon in tax laws and particularly in the taxation of natural resources, but the state should avoid skewing its tax system to ameliorate international problems beyond its control. Major distortions to the tax system result from severance taxes imposed by governmental entities below the national level, he argued.

Clear objectives are necessary in a revenue system, and Dr. Knedlik described Montana's tax methods as lacking in stability.

Montanans must understand the complexities and avoid making wrong decisions for the wrong reasons or just to do something. While a genuine adjustment in the revenue system rather than a "Window of Opportunity" is probably needed, Montana should realize that anything it does will have little effect on the world situation

that truly controls the energy markets. Nevertheless, any policy decision is better than no decision.

1985 INCREMENTAL PRODUCTION AND TAX CREDIT EARNED

Nearly 3 percent of the 33,000,000 tons of Montana coal produced in 1985 were incremental tons qualifying for the New Coal Production Incentive Tax Credit authorized under HB 607 of the 49th Legislature. Coal producers earned \$1,081,848 in credits by selling 968,000 tons of incremental coal under existing contracts.

The Department of Revenue provided this Subcommittee, at its meeting on July 18, 1986, with this analysis:

INCREMENTAL PRODUCTION & TAX CREDIT EARNED

<u>Producer</u>	Existing Contracts (tons)	Annual Credit Earned	1st Qtr. Credit Earned
Decker Coal Co.	583,326	\$814,520	\$203,630
Knife River	3,259	\$ 2,484	\$ 621
Peabody Coal	250,507	\$194,200	\$ 48,550
Spring Creek Coal	-0-	-0-	-0-
Western Energy	85,259	\$ 58,136	\$ 14,534
Westmoreland	45,683	\$ 12,508	\$ 3,127
Totals	968,034	\$1,081,848	\$270,462

PRODUCERS' REACTIONS TO INCENTIVE TAX CREDIT

If for no other reason than that their own self-interest justifies such a position, but also because of a genuine concern about the future of their industry that has become an important segment of the state's economy, the attitude of the companies and the people who produce the coal subject to Montana's severance tax is supportive of, at the very least, extension of the Window of Opportunity in its present form or, preferably, a broad opening of that portal.

Reviewing the history of the coal severance tax from the perspective of the mining companies, James D. Mockler, executive director of the Montana Coal Council, alleges that the proponents of the tax in 1975 recognized that it might shift some contracts from Montana to Wyoming. If that indeed was the intention of the severance tax advocates, Mockler said, their efforts proved successful when judged from the fact that from a position of approximate equality in coal production in 1975 Wyoming has progressed to a current advantage ratio of more than 4:1.

Mockler contended that the coal industry responded to the challenge of the Window of Opportunity by reducing prices and selling new coal and that Burlington Northern Railroad participated by reducing freight rates. The need for state assistance in mitigation of local impacts in the coal area is virtually eliminated, and that necessity is no longer a convincing argument for the severance tax, Mockler believes.

The competitive equality of Montana with Wyoming in freight charges was demonstrated, according to Mockler,

in a supporting letter from Northern States Power Company of Minneapolis.

The prospects for the future of Montana's coal industry were portrayed bleakly by the producers. Production tonnages are down and employment at the mines is sharply reduced; mainly, they argue, because Montana's severance tax rate inflates the price of Montana coal in geographically favorable markets to allow Wyoming to divert buy orders to its more distant mines. Northern States Power Company, in a letter to Mr. Mockler which he submitted to the Subcommittee on October 10, 1986, said renegotiations of its fuel supply contracts between Wyoming and Montana mines enable the utility company to reduce its minimum annual tonnage from Montana beginning this year and to stop taking Montana coal in 1996.

Recitation of the statements of the coal producing companies would be needlessly repetitious since their positions can be fairly characterized as supportive of the Incentive Tax Credit, which they say has been decisive in the only new coal sales generated in the past year, and they plead for further across-the-board reductions in the severance tax to a level of equality with Wyoming.

Support for the mining companies' positions was expressed by employees' spokesmen who emphasized that payroll losses caused by layoffs impact directly upon the retail businesses in those communities and ripple through the remainder of the state economy, both private and public sectors. Employment reductions of significant magnitudes occurred this year at the Western Energy, Peabody, and Westmoreland mines in

Rosebud and Big Horn counties where the secondary effects of those layoffs have been most disruptive.

PROPOSED EDUCATION BUILDING AND INSURANCE LOAN FUND

An innovative proposal for utilization of the Permanent Coal Tax Trust was presented to the Subcommittee by the Office of Public Instruction, which proposed creation of a fund, using a portion of the trust, to provide money to local school districts at interest rates 1½ percent or 2 percent below market rates. The purpose would be to assist in financing construction projects that would otherwise demand interest rates beyond the repayment ability of local taxpayers.

An additional purpose of the proposal would be to establish an insurance fund to provide liability and comprehensive coverage at lower cost than from private insurers. The plan requires an investment from the permanent trust of up to \$10,000,000 a year, totaling about \$175,000,000 over 20 years. A return of 10 percent is guaranteed for each of the first three years, after which the interest rate drops 1 percent a year until it reaches the floor of 6 percent.

No final action was taken on the proposal, which was never formally presented to the Subcommittee, and OPI is continuing its work to refine the details.

BEACH-WIBAUX PLANT IMPACT ASSISTANCE INTERSTATE COMPACT

During the 1983-84 interim, the Coal Tax Oversight Subcommittee met jointly with a special interim committee of the North Dakota Legislature to weigh the needs for assistance to localities to mitigate impacts

of the coal gasification plant proposed by Tenneco at Wibaux.

A proposed interstate compact was drafted by the North Dakota committee and submitted to the Coal Tax Oversight Subcommittee with the request that it be enacted by both states. Opting for more time to study the proposal, the Coal Tax Oversight Subcommittee did not recommend the compact to the 1985 Legislature. Nevertheless, North Dakota enacted the compact, which cannot become effective unless also adopted by Montana. Approval of applications for the project under both states' plant siting laws is the trigger for implementation of the compact.

After the North Dakota Legislature approved the compact, Tenneco announced indefinite postponement of the project and suspension of all planning. Main reason for the shelving of the project is the unfavorable world energy market in which the natural gas price is below the profitability level for a coal conversion plant.

Tenneco, however, has maintained its lease interests in the coal supplies for the plant.

Because the project could be resurrected on short notice in response to a sudden evaporation of the world energy glut, the Subcommittee agreed to recommend that the 50th Legislature approve the compact, after making several minor adjustments to the language of the North Dakota bill.

The Subcommittee informed the author of the North Dakota bill of its decision and respectfully requested

that North Dakota enact the changes necessary to conform with Montana's proposed amendments.

PROJECTIONS OF AND REALIZED SEVERANCE TAX REVENUE

At the Subcommittee's first meeting of this interim, on July 12, 1985, the Office of Budget and Program Planning projected coal severance tax revenue at \$103,865,000 in fiscal 1986 and at \$112,032,000 in fiscal 1987. Those expected proceeds were based on anticipated total production of 35,800,000 tons at a contract sales price of \$10.55 a ton in 1986 and 37,800,000 tons at \$10.70 a ton in 1987.

If realized, these income totals would have represented increases of about 11 percent and 9 percent respectively.

As with practically every source of state revenue, however, the rosy future failed to dawn.

In fiscal 1986, severance tax collections (after an allowance of \$282,717 for Incentive Tax Credit under HB 607) totaled \$84,217,223 on 31,114,028 tons of coal produced, according to the Department of Revenue. Although total production increased slightly in the four quarters that ended March 31, 1986, declining market value of the coal caused the total severance tax revenue to fall more than \$7.5 million short of the previous year and to come up more than \$19.5 million shy of original expectation.

For the first two quarters of fiscal 1987, net production of coal in Montana was 14,589,973 tons.

After deduction of tax credits of \$651,019.28, severance tax collected totaled \$37,375,198.35. During the comparable two quarters a year previously, coal severance tax collections totaled \$42,768,222.37. If this 13 percent rate of decline maintains throughout the next two quarters, severance tax collections for fiscal 1987 would be about \$73,000,000 or about \$11,000,000 less than in fiscal 1986.

In its first 11 years, the coal severance tax produced revenue of \$707,493,317. Of this total \$287,682,695 was deposited in the Permanent Trust, \$70,160,462 in the Education Trust, and \$15,951,260 in the Parks Acquisition Trust.

Deposits in the General Fund over the first 11 years, which reduced the demands on the taxpayers to support general activities of state government, totaled \$167,353,119. In that same period, the severance tax provided \$67,875,199 for local impact assistance, \$41,787,746 for public school equalization, and significant sums for 10 other purposes.

In addition to its direct proceeds, the severance tax indirectly generates revenue in the form of earnings on the trust funds. Though earnings rates have declined from the peak years of the early 1980s, annual rate of return has remained in the 11 to 12 percent range. With the steadily growing investable balance, total earnings continue to increase.

The Office of Budget and Program Planning, in its tabulation of coal production and contract sales price, reported total production of 32,946,439 tons in fiscal 1986 and 33,504,681 tons in fiscal 1985. For those two

years, the Department of Revenue reported production of 31,114,028 tons and 31,002,174 tons respectively. The discrepancy represents the volume of production which is held in escrow by the U.S. District Court in the litigation over taxation on production in the Ceded Strip of Crow Indian lands.

The tabulation by the Budget Office shows that the contract sales price on Montana coal rose steadily to a peak of \$9.98 a ton in fiscal 1983. In the three subsequent fiscal years the contract sales price per ton declined in successive years to \$9.868, \$9.731, and \$8.979.

COAL SEVERANCE TAX CHANGES IN JUNE 1986 SPECIAL SESSION

Among measures enacted by the June 1986 special session in response to the budget shortfall were three bills that revised the distribution of the coal severance tax revenue:

HB 15 (Chapter 3, Laws of Special Session, June 1986) diverted the 5 percent allocation (after the deposit in the Permanent Trust and the allocation to the Highway Reconstruction Trust Fund) under 15-35-108(3)(f), MCA, which formerly went to the nonexpendable Parks and Cultural Trust Fund, to the General Fund between July 1, 1986, and June 30, 1989. The 5 percent share will again go to the Parks and Cultural Trust Fund from revenue received after July 1, 1989. During the three years when the Parks and Cultural Trust Fund is capped, its income will continue to be appropriated two-thirds to parks and one-third to cultural and aesthetic projects.

The language in the income allocation in 15-35-108(3)(f)(ii) was amended to allow the money to be used for the operation, development, and maintenance of all sites in the state parks system rather than only for sites acquired with coal severance tax money.

HB 23 (Chapter 5) appropriated to the general fund \$680,000 for fiscal year 1986 and \$1,000,000 for fiscal year 1987 from coal severance tax money allocated to the Coal Board for grants and loans in the Local Impact and Education Trust Fund.

SB 13 (Chapter 19) amended 15-35-108(3)(b) to reduce until July 1, 1987, the allocation of coal severance tax revenue to the Local Impact and Education Trust Fund account from 26 percent to 6 percent (after the Permanent Trust deposit and the highways allocation) and to allow the Coal Board to award all of the money received by the account. After July 1, 1987, the coal severance tax allocation to the Local Impact and Education Trust Fund will be 37½ percent of the collections remaining after the priority deposit and allocation.

Before July 1, 1986, the Coal Board had access for grants and loans to 23.08 percent of the 26 percent share of the tax proceeds, and the other 74.92 percent went to the Education Trust.

After July 1, 1987, the Coal Board will have available for grants and loans 46.69 percent of the 37½ percent coal severance tax allocation to the account, and 53.31 percent will go to the Education Trust.

SB 13 also increased for the year ending June 30, 1987, the allocation of coal severance tax proceeds to state equalization aid from 10 percent to 30 percent. After July 1, 1987, that allocation returns to 10 percent.

Share of Coal Severance Tax Proceeds
Available to Coal Board

<u>Fiscal Year</u>	<u>% Available To Coal Board</u>	<u>Legislative Appropriation</u>	<u>Reduction by Later Action</u>
1984	8.75	\$7,247,050	-
1985	8.75	8,028,024	\$ 750,000 to Gen. Fund
1986	3.00	3,115,980	\$ 680,000 to Gen. Fund
1987	2.64	2,957,671	\$1,000,000 to Gen. Fund
1988	6.65	--	--
1989	6.65	--	--

SOURCES

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Office of Budget and Program Planning, Terry W. Johnson, Bureau Chief, Coal Severance Tax Statistics, October 10, 1986, and Coal Severance Tax Revenue Estimates, November 13, 1986.

Department of Revenue, Dan Bucks, Deputy Director, Comparison of Coal Production Taxes: Wyoming and Montana, October 10, 1986.

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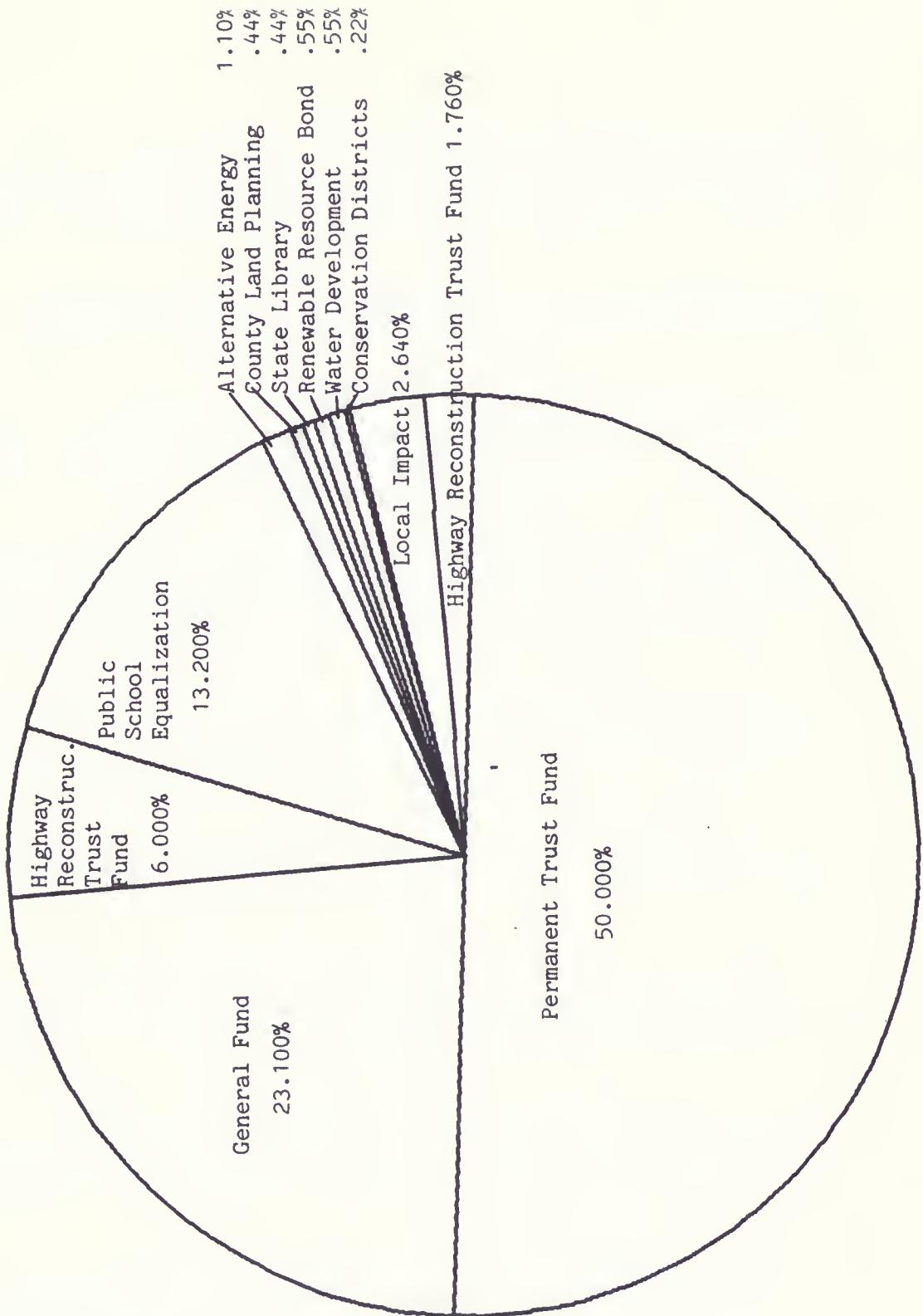
Laws of Special Session, June, 1986, Chapters 3, 5, and 19.

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APPENDIX A

DISTRIBUTION OF
COAL SEVERANCE TAX
PROCEEDS AND EARNINGS
OF TRUST FUNDS

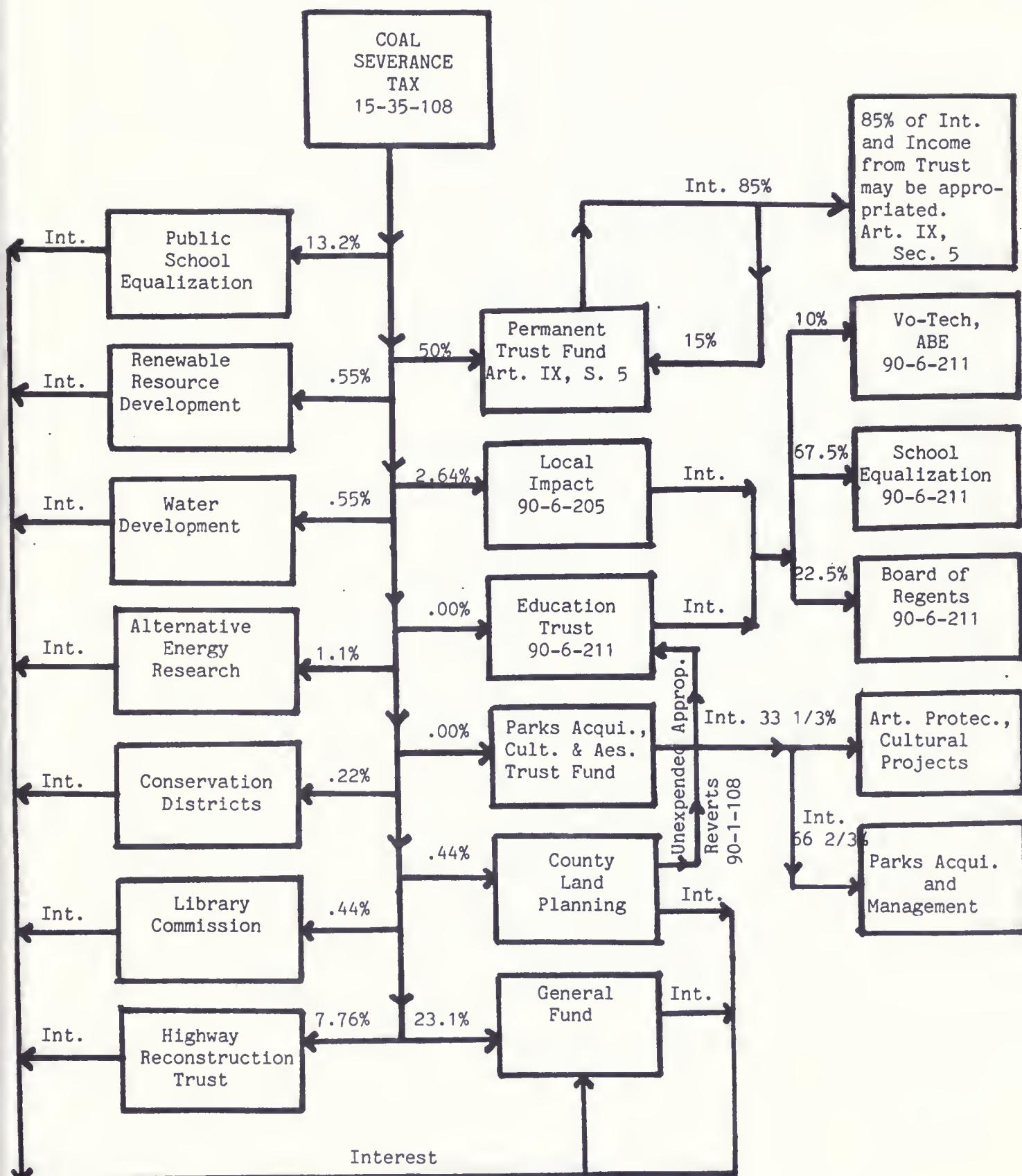
COAL SEVERANCE TAX DISTRIBUTION
Effective July 1, 1986, through June 30, 1987
As amended by June, 1986, Special Session



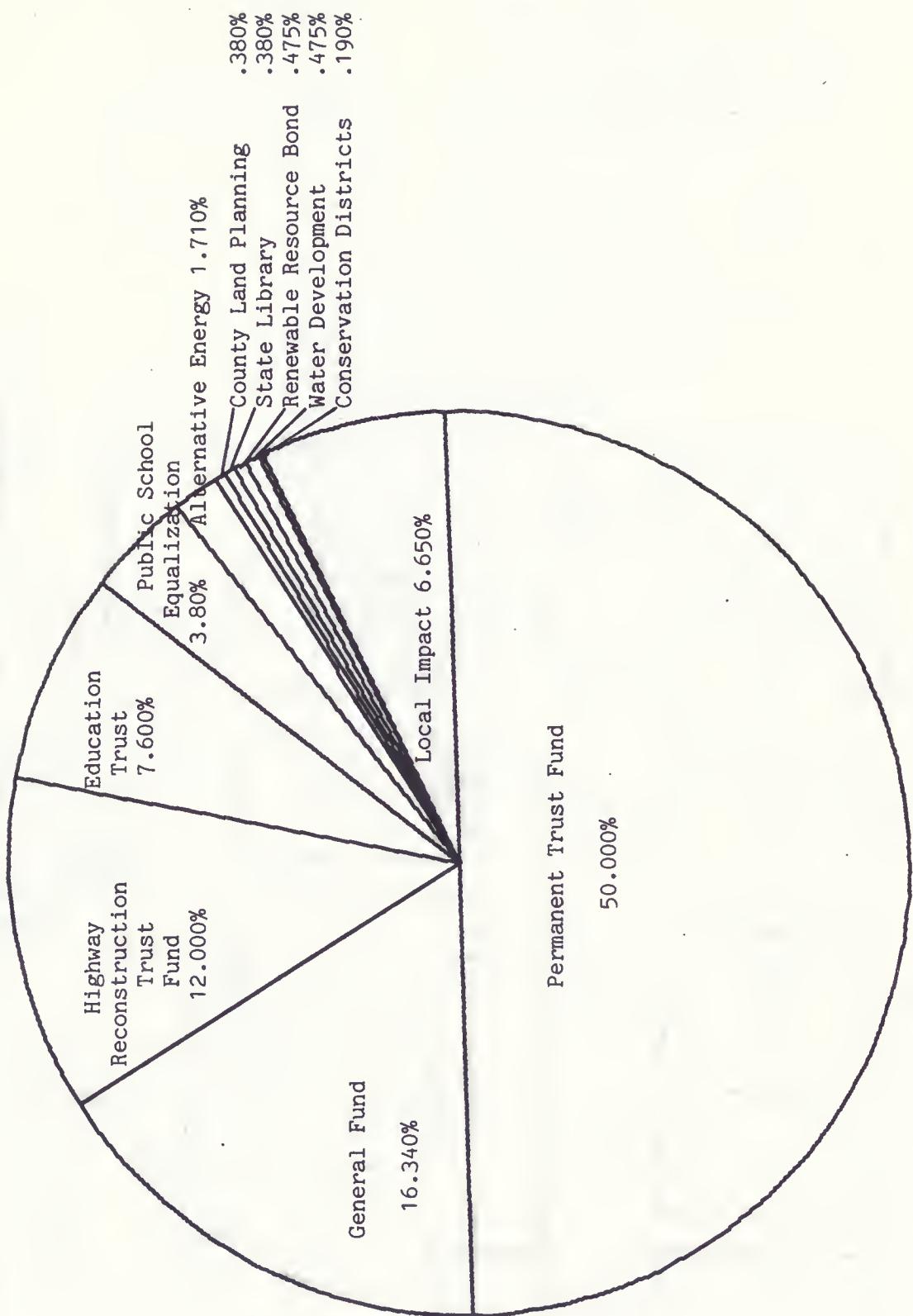
COAL SEVERANCE TAX DISTRIBUTION

Effective July 1, 1986, through June 30, 1987

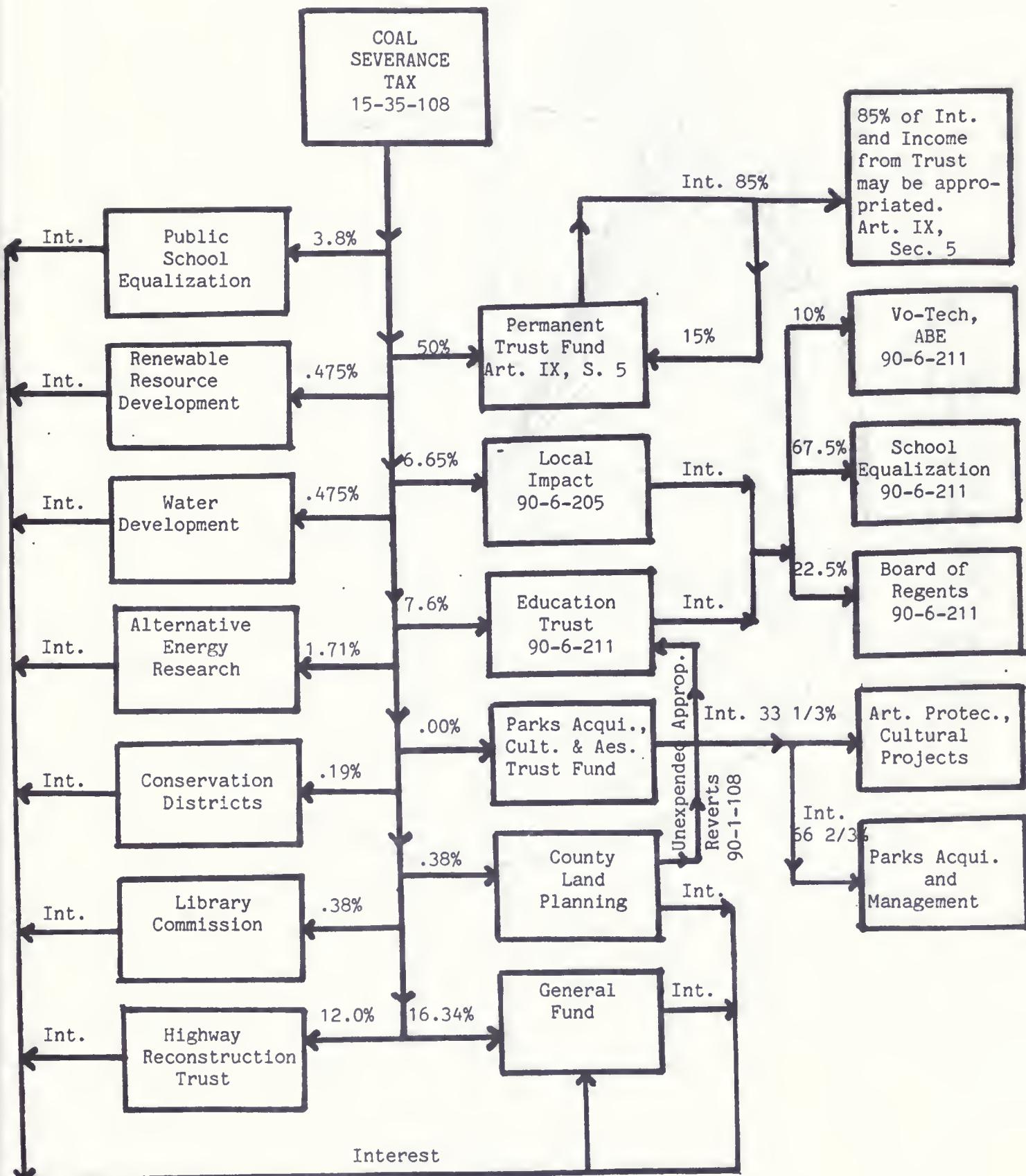
As amended by June, 1986, Special Session
Prepared for the Coal Tax Oversight Subcommittee
By Paul E. Verdon, Staff Researcher
July 11, 1986



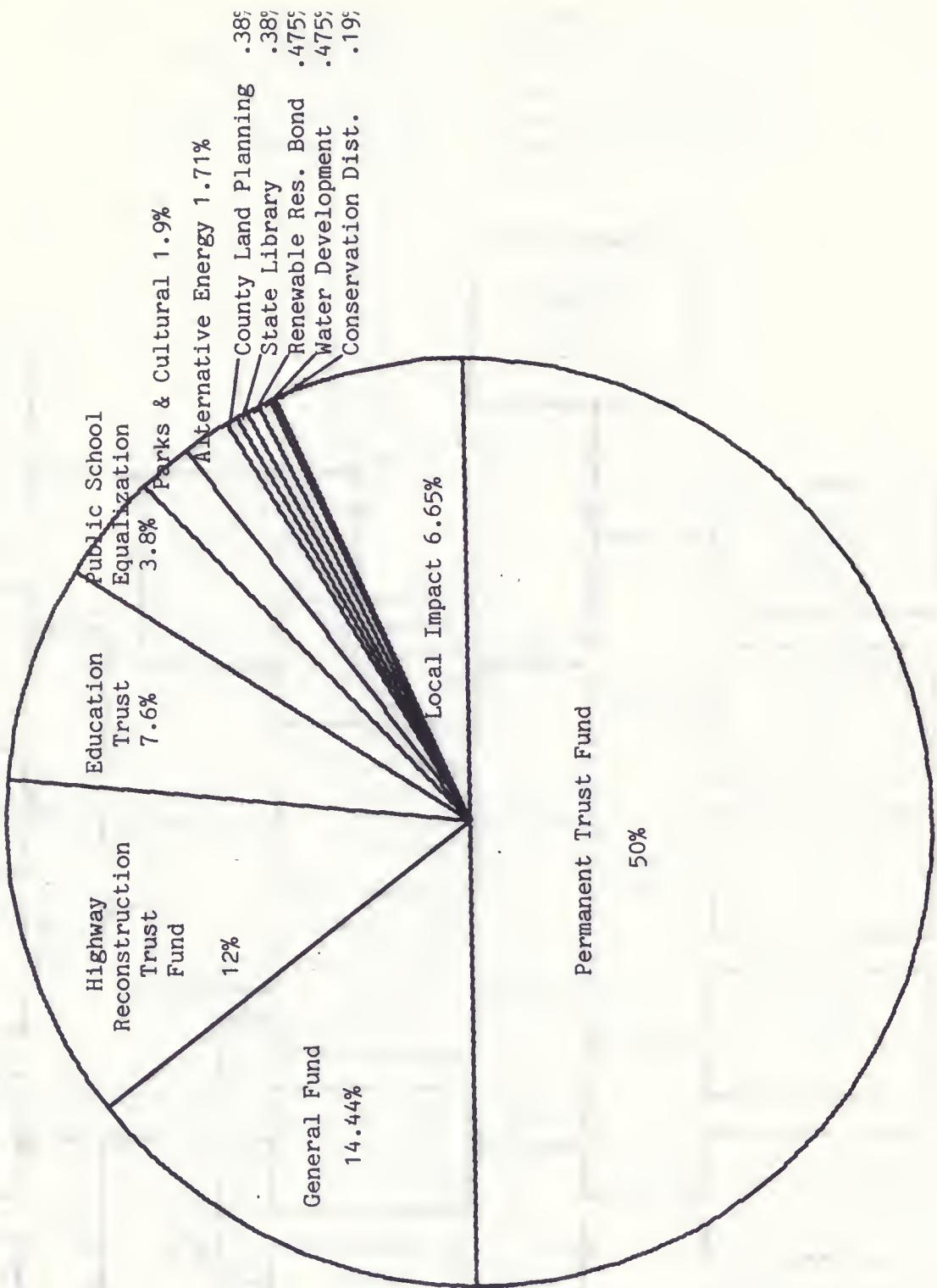
COAL SEVERANCE TAX DISTRIBUTION
Effective July 1, 1987, through June 30, 1989
As amended by June, 1986, Special Session



COAL SEVERANCE TAX DISTRIBUTION
 Effective July 1, 1987, through June 30, 1989
 As amended by June, 1986, Special Session
 Prepared for the Coal Tax Oversight Subcommittee
 By Paul E. Verdon, Staff Researcher
 July 11, 1986



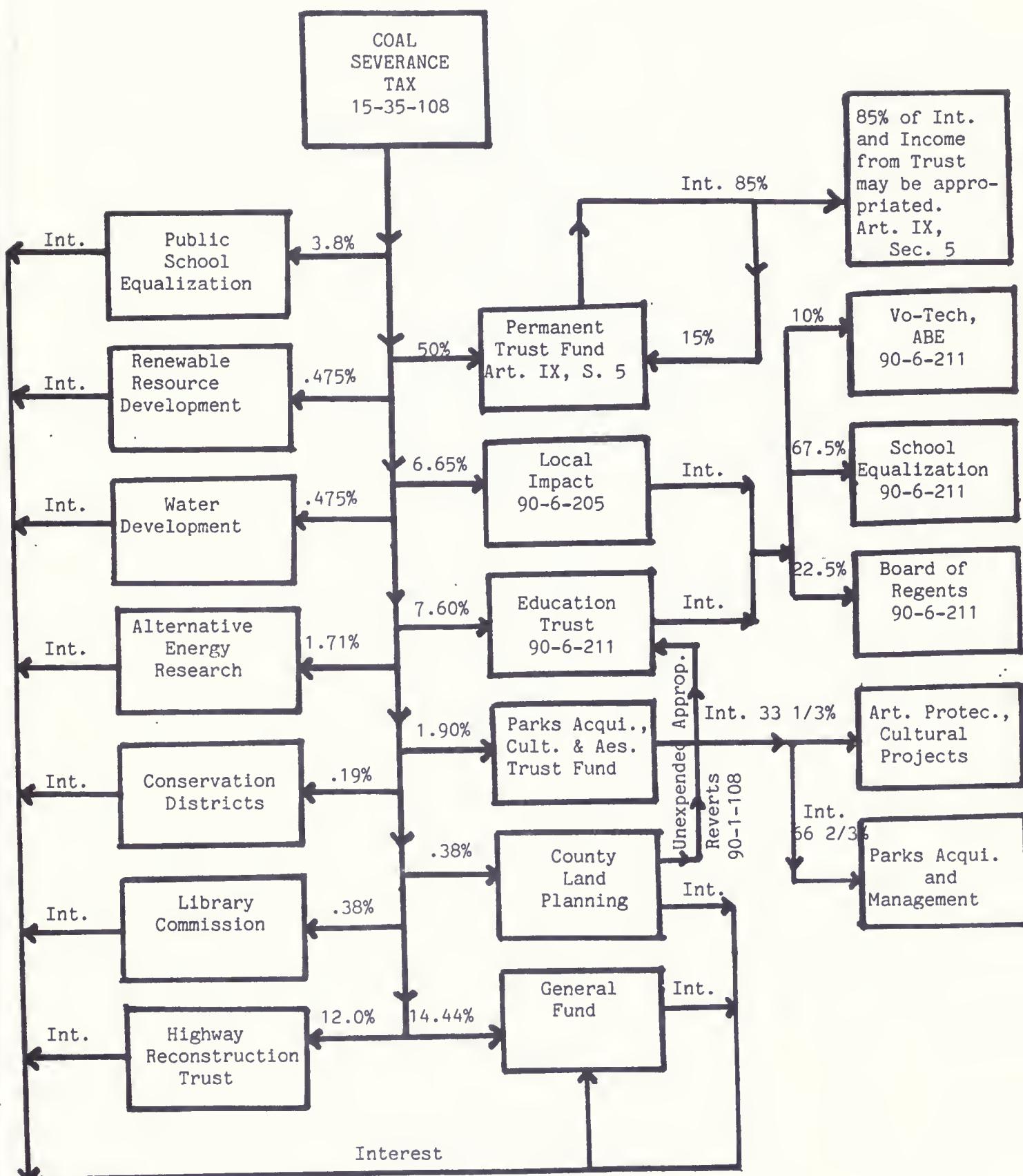
COAL SEVERANCE TAX DISTRIBUTION
Effective July 1, 1989, through June 30, 1993
As amended by June, 1986, Special Session



COAL SEVERANCE TAX DISTRIBUTION

Effective July 1, 1989, through June 30, 1993

As amended by June, 1986, Special Session
Prepared for the Coal Tax Oversight Subcommittee
By Paul E. Verdon, Staff Researcher
July 11, 1986



APPENDIX B

STATISTICAL HISTORY
OF
MONTANA'S
COAL SEVERANCE TAX

Compiled by
Office of Budget and Program Planning
October 10, 1986

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING



TED SCHWINDEN, GOVERNOR

STATE CAPITOL

STATE OF MONTANA

(406) 444-3616

HELENA, MONTANA 59620

M E M O R A N D U M

TO: Members of the Coal Tax Oversight Committee

FROM: Terry W. Johnson, Bureau Chief *awj*
Office of Budget & Program Planning

SUBJECT: Coal Severance Tax Statistics

DATE: October 10, 1986

Since the enactment of the coal severance tax legislation in 1975, Montana has received \$707.5 million in tax receipts and \$182.3 million in interest collections. Interest earnings were realized from the investment of the permanent, education and park acquisition trust accounts.

Total receipts, taxes plus investment income, were \$889.9 million of which \$396.1 million remains in trust accounts. These trusts continue to provide an annual return of 11 to 12 percent.

Table I and II provide detailed summaries of severance tax and interest collections. Although severance taxes have remained relatively stable at \$80 to \$90 million per year since 1982, annual interest earnings have grown by more than 34 percent. Larger investable balances plus stable long-term interest rates have provided the base for strong investment income growth.

The attached graphs depict Montana's coal production and contract sales price trends since fiscal year 1976. As seen from Graph I, Montana's production peaked at 34.4 million tons in fiscal year 1980. Since this time, production has not followed any specific trend.

Graph II shows that the contract sales price peaked in fiscal year 1983 at \$9.98. Prices continued to decline moderately in 1984 and 1985 and have declined more rapidly in 1986. Factors that have contributed to these trends include: Decker's contract dispute with the Lower Colorado River Authority, legislation to phase-in royalty deductions and the general condition of world energy prices.

Table III provides the percentages used to distribute the coal severance tax to the various state accounts. The changes passed by the June special session have been incorporated.

Page 2;
Coal Severance Tax Statistics
October 10, 1986

Since coal companies are required to pay severance taxes quarterly, statistics on production and prices have been available since fiscal year 1976. Table IV provides a summary of this data for all major coal companies. Production is in millions of tons and contract sales prices are in dollars per ton.

The final attachment is a pie chart of general fund receipts by revenue component. In total, coal revenues contributed 15 percent to general fund operations in fiscal year 1986; 5.7 percent from the coal severance tax and 9.3 percent from the permanent trust interest earnings.

OFFICE OF BUDGET & PROGRAM PLANNING
COAL SEVERANCE TAX ANALYSIS

COAL SEVERANCE TAX COLLECTIONS

TABLE I

ACCT.	ACCOUNT NAME	ACTUAL FY 76	ACTUAL FY 77	ACTUAL FY 78	ACTUAL FY 79	ACTUAL FY 80	ACTUAL FY 81	ACTUAL FY 82	ACTUAL FY 83	ACTUAL FY 84	ACTUAL FY 85	ACTUAL FY 86	CUMULATIVE TOTALS
01100	GENERAL FUND	10,586,335	14,362,422	11,241,695	12,806,812	20,222,579	13,378,906	16,375,501	15,208,546	15,736,452	17,432,283	20,201,588	167,353,119
02403	PUBLIC SCHOOL EQUALIZATION	2,203,181	3,590,606	2,810,392	3,201,679	5,210,070	3,520,751	4,309,342	4,002,249	4,141,172	4,587,443	4,210,861	41,787,746
02405	STATE LIBRARY	0	0	0	0	383,568	352,075	430,934	400,225	414,117	458,744	421,086	2,860,749
02424	HIGHWAY RECONSTRUCTION TRUST	0	0	0	0	0	0	0	0	0	0	0	0
02424	HIGHWAY RECONSTRUCTION TRUST	0	0	0	0	0	0	0	0	0	0	0	0
02434	CONSERVATION DISTRICTS	0	0	0	0	0	0	0	99,325	200,112	207,059	229,372	210,543
02437	ALTERNATIVE ENERGY RESEARCH	550,795	897,651	702,598	800,420	1,514,667	1,760,376	2,055,346	1,801,012	1,863,527	2,064,349	1,052,715	15,063,456
02444	COUNTY LAND PLANNING	220,318	359,061	281,039	320,168	521,007	352,075	430,934	400,225	414,117	458,744	421,086	4,178,774
02445	LOCAL IMPACT	3,855,567	6,283,560	4,798,525	5,399,195	9,030,162	6,161,314	7,561,349	7,003,936	7,247,050	8,028,025	2,526,516	67,875,199
04008	RENEWABLE RESOURCES BOND	550,795	897,651	702,598	800,420	1,302,518	880,188	1,077,336	1,000,562	624,224	573,430	526,358	8,936,080
04011	WATER DEVELOPMENT	0	0	0	0	0	0	0	0	0	411,069	573,430	526,358
09001	PERMANENT TRUST	0	0	6,268,016	10,672,277	23,024,226	35,207,511	43,093,423	40,022,491	41,411,716	45,874,428	42,108,607	287,682,695
09004	PARK ACQUISITION TRUST	275,398	448,826	351,299	400,210	2,089,639	1,760,376	2,156,671	2,001,125	2,070,565	2,293,721	2,105,430	15,951,260
09005	EDUCATION TRUST	2,203,181	3,590,606	2,742,014	3,085,254	8,995,772	7,041,502	8,618,685	8,004,498	8,282,343	9,174,886	8,421,721	70,160,462
	ACQUISITION OF SITES & AREAS	275,398	448,826	351,299	400,210	171,799	0	0	0	0	0	0	1,647,532
	COAL AREA HIGHWAY IMPROVEMENT	2,203,181	3,590,606	3,374,514	4,162,183	1,786,708	0	0	0	0	0	0	15,117,192
	COUNTIES	1,040,493	1,436,242	748,076	640,336	872,294	0	0	0	0	0	0	4,737,441
	TOTAL TAXES	23,964,642	35,906,057	34,372,065	42,689,164	75,125,009	70,415,074	86,186,846	80,044,981	82,823,411	91,748,855	84,217,213	707,493,317

OFFICE OF BUDGET & PROGRAM PLANNING
COAL SEVERANCE TAX ANALYSIS
TABLE III

COAL SEVERANCE TAX INTEREST COLLECTIONS

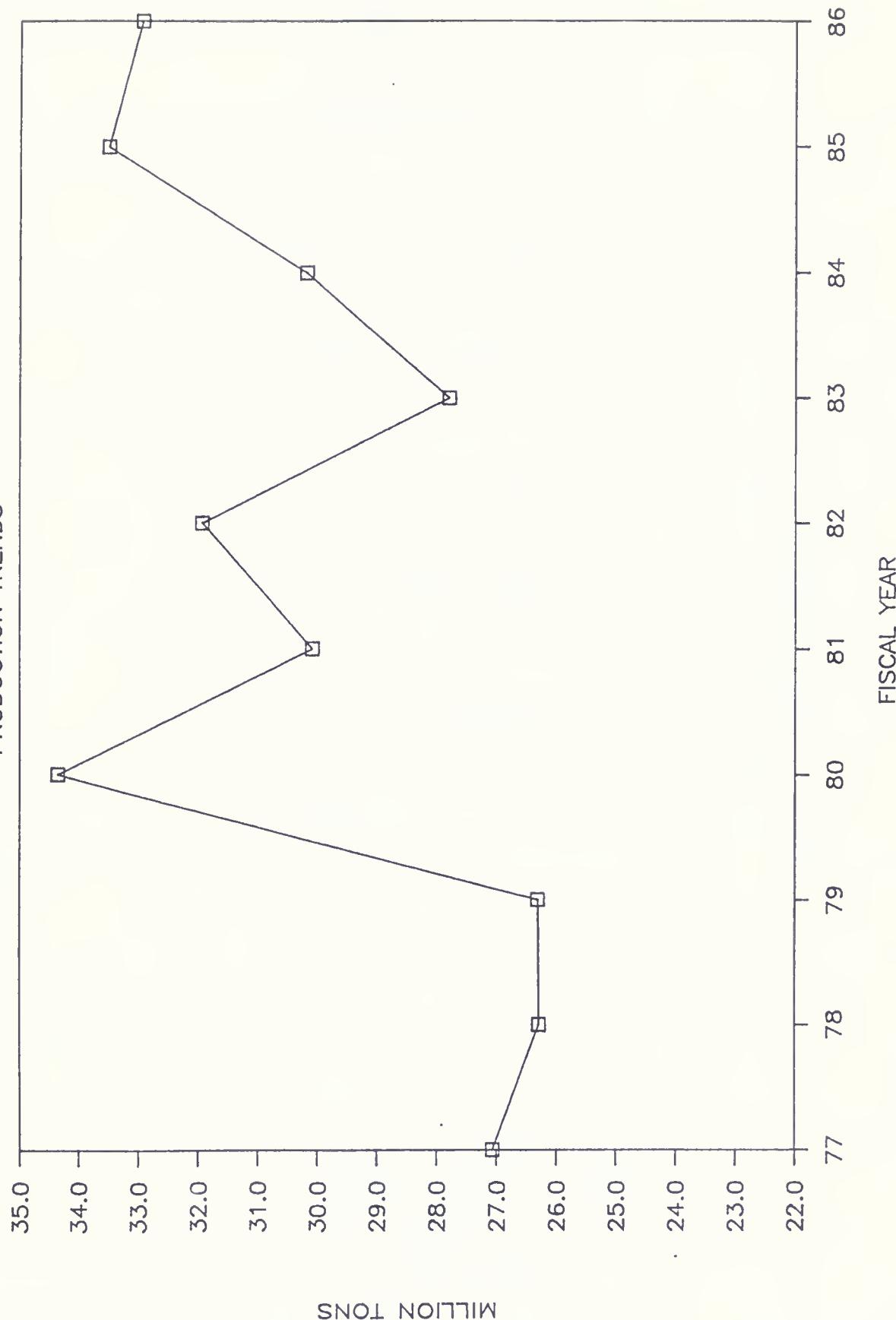
ACCT. ENTITY	ACCOUNT NAME	ACTUAL FY 76	ACTUAL FY 77	ACTUAL FY 78	ACTUAL FY 79	ACTUAL FY 80	ACTUAL FY 81	ACTUAL FY 82	ACTUAL FY 83	ACTUAL FY 84	ACTUAL FY 85	ACTUAL FY 86	CUMULATIVE TOTALS
EDUCATION TRUST EARNINGS													
02403	PUBLIC SCHOOL EQUALIZATION	0	45,076	348,669	447,265	582,852	1,172,659	2,376,417	8,230,693	5,107,578	5,877,017	7,759,479	31,947,705
02022	BOARD OF REGENTS	0	15,025	116,223	169,088	194,284	390,806	792,139	2,743,565	1,702,526	1,959,006	2,586,493	10,649,235
02075	EDUCATION TRUST/WO-TECH/ABE	0	6,678	51,655	66,262	86,348	173,727	352,062	1,219,362	756,678	870,669	1,169,552	4,732,993
PERMANENT TRUST EARNINGS													
01100	GENERAL FUND	0	0	86,801	712,165	2,118,130	5,099,806	11,726,303	18,520,100	18,947,636	26,299,902	32,443,208	113,954,051
09001	PERMANENT TRUST	0	0	0	0	0	0	0	0	3,343,701	4,372,136	5,725,018	13,440,855
PARK ACQUISITION TRUST EARNINGS													
02408	FISH, WILDLIFE & PARKS	0	0	0	104,007	253,740	490,378	552,367	633,862	618,693	987,136	1,682,115	5,322,298
02069	MONTANA ARTS COUNCIL	0	0	0	0	0	0	276,184	316,931	309,346	493,568	840,931	2,236,960
TOTAL INTEREST													
		0	66,779	603,348	1,478,787	3,235,354	7,327,456	16,075,472	31,664,513	30,786,158	38,859,434	52,186,796	182,284,097

TRUST BALANCES AS OF 6/30/86

PERMANENT TRUST	268,234,509
PERMANENT TRUST - IN-STATE	31,920,751
PARK ACQUISITION TRUST	16,222,131
EDUCATION TRUST	79,761,708
TOTAL	396,139,099

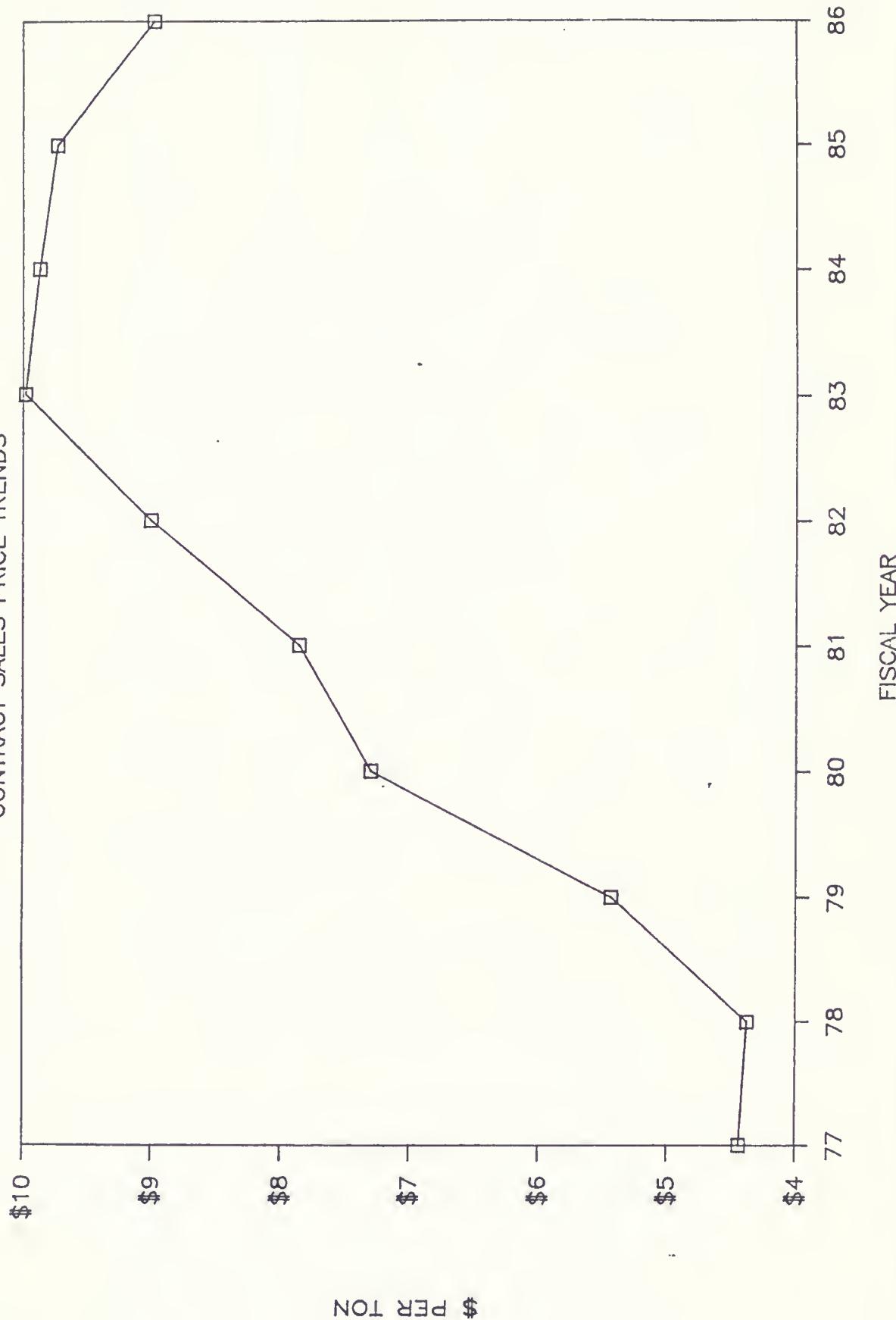
GRAPH I

COAL SEVERANCE TAX
PRODUCTION TRENDS



GRAPH II

COAL SEVERANCE TAX
CONTRACT SALES PRICE TRENDS



**OFFICE OF BUDGET & PROGRAM PLANNING
COAL SEVERANCE TAX ANALYSIS**

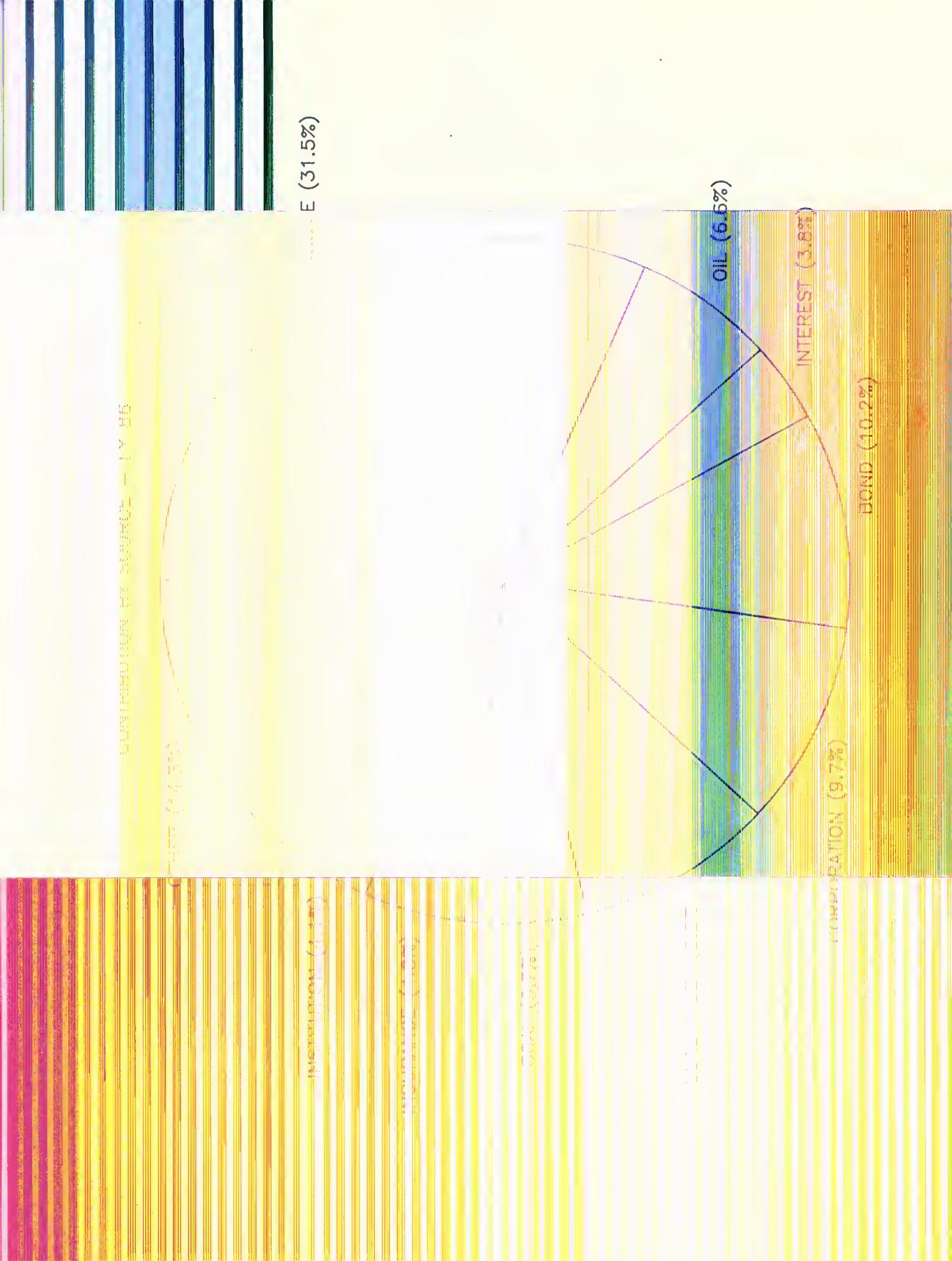
COAL SEVERANCE TAX DISTRIBUTION FORMULA

OFFICE OF BUDGET & PROGRAM PLANNING
COAL SEVERANCE TAX ANALYSIS

TABLE IV

ALL COMPANIES

YR	TONS	QUARTER 1		QUARTER 2		QUARTER 3		QUARTER 4		CALENDAR TONS	YEAR PRICE	FISCAL TONS	YEAR PRICE
		PRICE	TONS	PRICE	TONS	PRICE	TONS	PRICE	TONS				
73	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
74	NA	NA	3.262262	NA	3.474589	NA	4.445766	NA	NA	NA	NA	NA	NA
75	4.707641	NA	5.251446	NA	5.704942	4.012	6.412183	4.412	22.076212	NA	15.890258	NA	NA
76	5.327097	4.239	6.971796	4.544	6.6371616	4.274	7.289845	4.549	26.226354	4.415	22.695668	NA	NA
77	6.168980	4.368	7.2778758	4.275	7.193465	4.256	6.564083	4.496	27.205286	4.344	27.068237	4.439	4.439
78	5.257906	4.541	7.3636777	4.833	6.934979	5.300	6.861466	5.820	26.418028	5.154	26.294212	4.378	4.378
79	5.159279	5.962	8.853341	6.913	8.978810	7.072	9.358533	7.416	32.349963	6.951	26.319401	5.435	5.435
80	7.169227	7.919	6.442751	7.765	8.422696	6.851	7.717433	8.460	29.752107	7.724	34.359911	7.301	7.301
81	7.506647	8.442	9.027774	8.698	8.837548	8.651	7.816296	8.946	33.188265	8.686	30.089527	7.857	7.857
82	6.254701	10.023	7.136528	9.572	7.015314	9.537	7.361449	9.605	27.767992	9.673	31.936319	9.005	9.005
83	6.284832	11.379	6.549678	9.898	8.087980	9.795	7.686465	9.416	28.608955	10.065	27.798123	9.980	9.980
84	7.863751	10.359	6.483929	9.644	9.436055	9.624	9.063932	9.065	32.847667	9.650	30.187874	9.868	9.868
85	8.520765	10.625	7.904093	9.075	8.825768	9.119	7.936814	8.990	33.187440	9.464	33.504681	9.731	9.731
86	8.279764	8.729	6.627265	9.435	NA	NA	NA	NA	NA	NA	32.946439	8.979	8.979



APPENDIX C

BILLS RECOMMENDED
FOR ENACTMENT
BY THE 50TH LEGISLATURE

1 BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A BEACH-WIBAUX

6 PLANT IMPACT ASSISTANCE INTERSTATE COMPACT; CREATING

7 INTERSTATE COMMISSION TO ADMINISTER THE COMPACT; A

8 AUTHORIZING USE OF A PORTION OF THE COAL SEVERANCE TAX

9 PROCEEDS."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Definitions. Unless the context requires

13 otherwise, the following definitions apply in this compact.

14 (1) "Commission" means the Beach-Wibaux plant im-

15 assistance interstate compact commission.

16 (2) "Compact" means the Beach-Wibaux plant im-

17 assistance interstate compact.

18 (3) "Fund" means the Beach-Wibaux plant im-

19 assistance fund.

20 (4) "Party states" means the states of North Dakota

21 and Montana.

22 (5) "Plant" means a coal gasification plant and

23 related mining and other facilities to be constructed and

24 operated in the Beach, North Dakota-Wibaux, Montana area

25 the Tenneco Company or its legal successor in interest.

Section 2. Policy purpose. The states of North Dakota and Montana recognize that the development of the natural resources of both states must be accomplished in a manner which best benefits and protects the health, safety, and economic well-being of the citizens of both states. The party states recognize that social and economic impacts may occur in the areas in both states where the development of natural resources is taking place and that these impacts accrue to both states without regard to the existence of political boundaries. It is further recognized that the protection of the health, safety, and economic well-being of the citizens of the party states can be accomplished through the cooperation of the party states in providing the necessary assistance to the areas in the party states affected by the development of natural resources.

The party states recognize that the construction and operation of a coal gasification facility in Montana near the Beach, North Dakota-Wibaux, Montana area will cause significant social and economic impacts in that area which are beyond the financial capacities of the affected local governmental entities in both states to mitigate.

It is the purpose of this compact to provide the means for a cooperative effort between the party states to ensure the existence of financial support to the areas in both states necessary to mitigate the resulting impacts from the

Montana Legislative Council

1 Beach-Wibaux coal gasification plant.

2 Section 3. Entry into force -- termination. (1) This
3 compact is effective when the party states have enacted the
4 compact by appropriate legislation in substantially similar
5 form and when the necessary permits for siting of the plant
6 have been approved and issued under the North Dakota Energy
7 Conversion and Transmission Facility Siting Act or the
8 Montana Major Facility Siting Act.

9 (2) This compact is terminated when unanimously agreed
10 to by the party states or when the plant has permanently
11 ceased operations. In the event of termination, all rights
12 established under this compact continue unimpaired. The
13 unobligated moneys and assets of the fund at termination
14 must be paid over to the party states in proportion to the
15 coal mined for the plant in each respective state.

16 Section 4. Beach-Wibaux plant impact assistance
17 interstate compact commission. (1) There is hereby created
18 an interstate administrative agency to be known as the
19 Beach-Wibaux plant impact assistance interstate compact
20 commission. The commission must be composed of the director
21 of the North Dakota energy development impact office; the
22 chairman of the Montana coal board; one Montana resident,
23 residing in the area impacted by the plant, appointed by the
24 governor of Montana; one North Dakota resident, residing in
25 the area impacted by the plant, appointed by the governor of

1 North Dakota; one person from Montana appointed by the
2 chairman of the Montana legislative council; and one person
3 from North Dakota appointed by the chairman of the North
4 Dakota legislative council. The governors and chairmen of
5 the legislative councils of each party state shall appoint
6 their party state's respective commission members for terms
7 and conditions and in a manner as each party state may
8 choose. The commission members appointed by the party states
9 shall unanimously choose an additional member, who shall
10 serve a term of 2 years and who shall, when present, act as
11 chairman of the commission. The additional member may be
12 removed as a member of the commission by a vote of three of
13 the other commission members. There may be no alternates or
14 proxies for commission members.

15 (2) Each commission member is entitled to one vote on
16 any subject matter before the commission. No action of the
17 commission is binding unless a majority of the total
18 membership cast affirmative votes.

19 (3) The commission shall meet at least once each six
20 months and shall also meet upon the call of the chairman or
21 upon the call of two or more members. Meetings of the
22 commission may be held in any place in either state the
23 commission determines to be reasonably convenient for the
24 attendance of persons required or entitled to attend and
25 where adequate accommodations can be found. The commission

1 shall afford reasonable public notice and opportunity for
2 comment at each meeting. All meetings of the commission must
3 be open to the public. All commission actions and decisions
4 must be appropriately recorded.

5 (4) Each party state is responsible for the payment of
6 the compensation and necessary expenses of its respective
7 commission members. All other expenses resulting from
8 administration of the compact must be allocated to and borne
9 one-half by each party state. The commission shall submit to
10 the governor or designated officer of each party state a
11 budget of its estimated expenditures for the relevant period
12 and as required by the laws of each party state for
13 presentation to the legislative assembly of each party
14 state. The commission budget report must contain specific
15 recommendations of the amounts to be appropriated by each
16 party state.

17 (5) The commission shall keep accurate records and
18 accounts of all receipts and disbursements. The commission
19 shall engage an independent certified public accountant who
20 shall annually audit all receipts and disbursements of
21 commission funds and submit an audit report to the
22 commission. The commission shall forward copies of the audit
23 report to the legislative assemblies of each party state.
24 The accounts of the commission must be open at any
25 reasonable time for inspection by the party states.

1 (6) The commission shall adopt and publish bylaws and
2 administrative rules as are necessary for the performance of
3 its powers and duties under this compact. The commission
4 shall file copies of any bylaws and rules adopted with the
5 North Dakota energy development impact office and the
6 Montana coal board.

7 (7) The commission is a legal entity separate and
8 distinct from the party states. The commission is capable of
9 action in its own behalf and is liable for its own actions.
10 Liabilities of the commission are not liabilities of the
11 party states. Commission members are not personally liable
12 for actions taken by them in their official capacity. The
13 commission may sue and be sued in its official capacity in
14 any federal court of the party states and may accept for any
15 of its purposes and functions donations, grants, of money,
16 equipment, supplies, materials, and services from any person
17 or the federal government.

18 (8) The commission may employ a staff to carry out its
19 duties and functions and may contract with any person for
20 the purpose of providing expert consulting services.
21 Employees of the commission shall participate in the federal
22 social security system. The commission may establish
23 additional employee benefit programs to afford terms and
24 conditions of employment similar to those provided to
25 employees of the party states.

1 Section 5. Impact assistance program. (1) There is
2 hereby created the Beach-Wibaux plant impact assistance
3 fund, to be administered under this compact by the
4 commission.

5 (a) Each party state shall contribute to the fund an
6 amount equal to 8% of the coal severance tax revenue for
7 coal mined in that state for the plant, using the lesser of
8 the coal severance tax rates of the party states.

9 (b) The commission may seek loans and grants from the
10 party states' respective agencies charged with providing
11 financial assistance to coal development impact areas. This
12 money must be deposited in the fund. The loans may be repaid
13 out of any money in the fund available for that purpose. The
14 commission shall issue evidences of indebtedness as may be
15 required to secure the loans. The commission shall provide
16 financial assistance under this compact, using money
17 received from a party state's coal impact agency only in the
18 state from which the money is received.

19 (2) The commission shall develop a program for
20 providing loans from the fund to the counties, cities,
21 school districts, or other appropriate political
22 subdivisions in the party states affected by the development
23 and operation of the plant. The commission shall prescribe
24 the terms and conditions of the loans. An entity receiving a
25 loan from the fund shall execute a warrant as evidence of

1 the loan. The warrant must bear interest at a rate
2 determined by the commission and is payable from any money
3 available to the governing entity for repayment of
4 indebtedness. The warrants must be negotiable. The
5 commission shall deposit any proceeds from the sale of the
6 warrants in the fund. The proceeds are not subject to
7 taxation by the party states or by any political subdivision
8 of the party states.

9 (3) The North Dakota state investment board and the
10 Montana board of investments shall invest the idle or
11 surplus money in the fund, in proportion to coal mined in
12 the respective states for the plant, as required by the laws
13 of each state. Upon determination by a majority vote of the
14 commission that the balance in the fund, after repayment of
15 any loans made under the provisions of subsection (1)(b),
16 such repayment to be made from funds contributed under
17 subsection (1)(a) by the state to which the loan is being
18 repaid, exceeds the amount needed for grants and loans
19 authorized under subsections (4) and (5), an amount equal to
20 the determined excess shall revert to the party states in
21 proportion to the coal mined in each state for the plant.
22 (4) The commission shall develop a plan for providing
23 financial grants from the fund for services and facilities
24 to the counties, cities, school districts, and other
25 appropriate political subdivisions in the party states

1 affected by the development and operation of the plant or by
2 the closing of the plant. The commission shall make grants
3 to counties, cities, school districts, and other political
4 subdivisions in the party states according to procedures and
5 criteria established by rule.

6 (5) The grants and loans from the fund are to be
7 provided for the purpose of mitigating impacts affecting
8 governmental services and directly necessitated by the
9 construction and operation of the plant or by the closing of
10 the plant. All loan and grant applications and presentations
11 to the commission must be made by an appointed or elected
12 governmental official with authority to represent the
13 political subdivision seeking the grant. The commission
14 shall not provide loans or grants from the fund for the
15 purpose of providing marriage or guidance counseling
16 services, programs to alleviate other sociological impacts,
17 or services or facilities to meet secondary impacts.

18 Section 6. Amendment -- statutory construction --
19 limitation of authority. (1) This compact may be amended by
20 the party states in the same manner as is required to ratify
21 the compact.

22 (2) Nothing in this compact may be construed to
23 abrogate or limit the applicability of any act of Congress
24 or diminish or otherwise impair the jurisdiction of any
25 federal agency expressly conferred thereon by the Congress.

1 (3) Nothing in this compact may be construed to grant
2 any authority not expressly provided.
3 -End-

(b) No provision in the MCA that limits indebtedness of a city, town, county, school district, or any other local or state governmental unit or agency applies to a loan approved by the board except to the extent that the loan causes the borrower's total indebtedness to exceed 200% of the limits provided.

(c) No provision in the MCA that requires a city, town, county, school district, or any other local or state governmental unit or agency to conduct an election or issue bonds before it may borrow money applies to a loan approved by the board.

(tb)(d) The repayment period for loans approved by the board may not exceed 20 years.

(tb)(e) The board shall hold all loan contracts within its administrative offices. The board may not sell, assign, or pledge a loan contract to any other entity.

(tb)(f) A local government unit or the governing body of a federally recognized Indian tribe receiving a loan from the board shall use or commit for use the loan money within 1 year of the date of the board's final approval of the loan.

(tb)(g) If a local government unit or the governing body of a federally recognized Indian tribe fails to comply with subsection (tb)(d) (2)(f), the entire loan must be repaid within 30 days following expiration of the 1-year

1 period.

2 (3) No loan or grant to an Indian tribe under 90-6-205

3 may be approved by the board unless, with respect to that

4 loan or grant:

5 (a) the governing body of the tribe has agreed:

6 (i) to waive its immunity from suit on any issue

7 specifically arising from the transaction of a loan or grant

8 obtained under this part; and

9 (ii) to the adjudication of any dispute arising out of

10 the loan or grant transaction in the district court of the

11 first judicial district of the state of Montana; and

12 (b) approval of the transaction has been obtained from

13 the secretary of the United States department of the

14 interior whenever such approval is necessary."

15 Section 2. Section 7-3-1321, MCA, is amended to read:

16 "7-3-1321. Authorization to incur indebtedness --

17 limitation. (1) The consolidated municipality may borrow

18 money or issue bonds for any municipal purpose to the extent

19 and in the manner provided by the constitution and laws of

20 Montana for the borrowing of money or issuing of bonds by

21 counties and cities and towns.

22 (2) The Except as provided in 90-6-209, the

23 municipality may not become indebted in any manner or for

24 any purpose to an amount, including existing indebtedness,

25 in the aggregate exceeding 28% of the taxable value of the

1 taxable property therein, as ascertained by the last

2 assessment for state and county taxes prior to incurring

3 such indebtedness. All warrants, bonds, or obligations in

4 excess of such amount given by or on behalf of the

5 municipality shall be void."

6 Section 3. Section 7-6-2211, MCA, is amended to read:

7 "7-6-2211. Authorization to conduct county business on

8 a cash basis. (1) In case the total indebtedness of a

9 county, lawful when incurred, exceeds the limit of 23%

10 established in 7-7-2101 by reason of great diminution of

11 taxable value, the county may conduct its business affairs

12 on a cash basis and pay the reasonable and necessary current

13 expenses of the county out of the cash in the county

14 treasury derived from its current revenue and under such

15 restrictions and regulations as may be imposed by the board

16 of county commissioners of the county by a resolution duly

17 adopted and included in the minutes of the board.

18 (2) Nothing in this section restricts the right of the

19 board to make the necessary tax levies for interest and

20 sinking fund purposes, and nothing in this section affects

21 the right of any creditor of the county to pursue any remedy

22 now given him by law to obtain payment of his claim.

23 (3) The provisions of this section do not apply to

24 loans approved under 90-6-209."

25 Section 4. Section 7-6-4121, MCA, is amended to read:

1 "7-6-4121. Authorization to conduct municipal business
2 on a cash basis. (1) In case the total indebtedness of a
3 city or town has reached 17% of the total taxable value of
4 the property of the city or town subject to taxation, as
5 ascertained by the last assessment for state and county
6 taxes, the city or town may conduct its affairs and business
7 on a cash basis as provided by subsection (2).

8 (2) (a) Whenever a city or town is conducting its
9 business affairs on a cash basis, the reasonable and
10 necessary current expenses of the city or town may be paid
11 out of the cash in the city or town treasury and derived
12 from its current revenues, under such restrictions and
13 regulations as the city or town council may by ordinance
14 prescribe.

15 (b) In the event that payment is made in advance, the
16 city or town may require a cash deposit as collateral,
17 security and indemnity, equal in amount to such payment, and
18 may hold the same as a special deposit with the city
19 treasurer or town clerk, in package form, as a pledge for
20 the fulfillment and performance of the contract or
21 obligation for which the advance is made.

22 (c) Before the payment of the current expenses
23 mentioned above, the city or town council shall first set
24 apart sufficient money to pay the interest upon its legal,
25 valid, and outstanding bonded indebtedness and any sinking

1 funds therein provided for and shall be authorized to pay
2 all valid claims against funds raised by tax especially
3 authorized by law for the purpose of paying such claims.

4 (3) The provisions of this section do not apply to
5 loans approved under 90-6-209."

6 Section 5. Section 7-7-2101, MCA, is amended to read:
7 "7-7-2101. Limitation on amount of county
8 indebtedness. (1) No county may become indebted in any
9 manner or for any purpose to an amount, including existing
10 indebtedness, in the aggregate exceeding 23% of the total of
11 the taxable value of the property therein subject to
12 taxation, plus the amount of new production taxes levied
13 divided by the appropriate tax rates described in
14 15-23-607(2)(a) or (2)(b) and multiplied by 60%, as
15 ascertained by the last assessment for state and county
16 taxes previous to the incurring of such indebtedness.
17 (2) No county may incur indebtedness or liability for
18 any single purpose to an amount exceeding \$500,000 without
19 the approval of a majority of the electors thereof voting at
20 an election to be provided by law, except as provided in
21 7-21-3413 and 7-21-3414.
22 (3) Nothing in this section shall apply to the
23 acquisition of conservation easements as set forth in title
24 76, chapter 6.
25 (4) The provisions of this section do not apply to

1 loans approved under 90-6-209."

2 Section 6. Section 7-7-2402, MCA, is amended to read:

3 "7-7-2402. Election required to borrow money --

4 exceptions. (1) Except as provided in subsection (3), the

5 board of county commissioners must not borrow money for any

6 of the purposes mentioned in this title or for any single

7 purpose to an amount exceeding \$10,000 without:

8 (a) first having submitted the question of a loan to a

9 vote of the electors of the county; and

10 (b) the approval of a majority of the electors of the

11 county.

12 (2) If a majority of the votes cast are in favor of

13 the loan, then the board may make the loan, issuing bonds or

14 otherwise as may seem best for the interests of the county.

15 (3) It shall not be necessary to submit to the

16 electors the question of borrowing money:

17 (a) to refund outstanding bonds; or

18 (b) for the purpose of enabling any county to

19 liquidate its indebtedness to another county incident to the

20 creation of a new county or the change of any county

21 boundary lines; or

22 (c) under the provisions of 90-6-209."

23 Section 7. Section 7-16-2327, MCA, is amended to read:

24 "7-16-2327. Indebtedness for park purposes. (1)

25 Subject to the provisions of subsection (2), a county park

1 board, in addition to powers and duties now given under law,

2 shall have the power and duty to contract an indebtedness in

3 behalf of a county, upon the credit thereof, for the

4 purposes of 7-16-2321(1) and (2).

5 (2) (a) The total amount of indebtedness authorized to

6 be contracted in any form, including the then-existing

7 indebtedness, must not at any time exceed 13% of the total

8 value of the taxable property in the county,

9 plus the amount of new production taxes levied divided by

10 the appropriate tax rates described in 15-23-607(2)(a) or

11 (2)(b) and multiplied by 60%, ascertained by the last

12 assessment for state and county taxes previous to the

13 incurring of such indebtedness.

14 (b) No money may be borrowed on bonds issued for the

15 purchase of lands and improving same for any such purpose

16 until the proposition has been submitted to the vote of

17 those qualified under the provisions of the state

18 constitution to vote at such election in the county affected

19 thereby and a majority vote is cast in favor thereof.

20 (3) The provisions of subsection (2) do not apply to

21 loans approved under 90-6-209."

22 Section 8. Section 20-9-509, MCA, is amended to read:

23 "20-9-509. Housing and dormitory fund. (1) The

24 trustees of any district that provides pupil or teacher

25 housing in district-owned buildings under a lease or rental

1 agreement with pupils or teachers or receives moneys under
2 the provision of 20-6-607 may establish a housing and
3 dormitory fund. All moneys received from such lease or
4 rental agreements may be deposited with the county treasurer
5 to the credit of the housing and dormitory fund, general
6 fund, the debt service fund, or any other appropriate fund.
7 Whenever the end-of-the-year cash balance of a housing and
8 dormitory fund is more than \$10,000, such cash balance in
9 excess of \$10,000 shall be transferred to the general fund
10 of the district.

11 (2) Any expenditure of moneys from a housing and
12 dormitory fund shall be made for the maintenance and
13 operation of the district-owned buildings to which the lease
14 or rental agreements apply, or for the acquisition of
15 additional housing or dormitory facilities, or for the
16 repayment of a loan made to the district by the coal board
17 under 90-6-209. The financial administration of the housing
18 and dormitory fund shall be in accordance with the financial
19 administration provisions of this title for a nonbudgeted
20 fund."

21 NEW SECTION. Section 9. Extension of authority. Any
22 existing authority of the coal board to make rules on the
23 subject of the provisions of this act is extended to the
24 provisions of this act.

25 NEW SECTION. Section 10. Effective date. This act is

1 effective on passage and approval.

-End-

1 BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CORRECTING REFERENCE

6 TO ALLOCATIONS OF PORTIONS OF THE PROCEEDS OF THE COAL

7 SEVERANCE TAX; AND AMENDING SECTIONS 20-9-343, 85-1-603, AND

8 90-2-124, MCA."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 20-9-343, MCA, is amended to read

12 "20-9-343. Definition of and revenue for state

13 equalization aid. (1) As used in this title, the term "state

14 equalization aid" means those moneys deposited in the state

15 special revenue fund as required in this section plus any

16 legislative appropriation of moneys from other sources for

17 distribution to the public schools for the purpose of

18 equalization of the foundation program.

19 (2) The legislative appropriation for state

20 equalization aid shall be made in a single sum for the

21 biennium. The superintendent of public instruction has

22 authority to spend such appropriation, together with the

23 earmarked revenues provided in subsection (3), as required

24 for foundation program purposes throughout the biennium.

25 (3) The following shall be paid into the state specie

revenue fund for state equalization aid to public schools of the state:

- (a) 25% of all moneys received from the collection of income taxes under chapter 30 of title 15;
- (b) 25% of all moneys, except as provided in 15-31-702, received from the collection of corporation license taxes under chapter 31 of title 15, as provided by 15-1-501;
- (c) 10% of the moneys received from the collection of the severance tax on coal under chapter 35 of title 15 and remaining after allocation of such tax under 15-35-108(1) and (2);
- (d) 100% of the moneys received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Land Leasing Act, as amended;
- (e) interest and income moneys described in 20-9-34 and 20-9-342;
- (f) income from the local impact and education trust fund account; and
- (g) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333 shall be paid into the same state special revenue fund.
- (4) Any surplus revenue in the state equalization aid

1 account in the second year of a biennium may be used to
2 reduce the appropriation required for the next succeeding
3 biennium [or may be transferred to the state permissive
4 account if revenues in that fund are insufficient to meet
5 the state's permissive amount obligation]."

6 Section 2. Section 85-1-603, MCA, is amended to read:

7 "85-1-603. Water development debt service fund created
8 -- coal severance tax allocated. (1) There is created a
9 water development debt service fund within the debt service
10 fund type established in 17-2-102.

11 (2) The state pledges and allocates and directs to be
12 credited to the water development debt service fund, as
13 received:

14 (a) 1 1/4% of all money from time to time received
15 from the coal severance tax collected under Title 15,
16 chapter 35, and remaining after allocation of such tax to
17 the--trust--fund--established under Article--IX7--section-57--of
18 The-Constitution--of--the-State--of--Montana 15-35-108(1) and
19 (2);

20 (b) any principal and accrued interest received in
21 repayment of a loan made from the proceeds of bonds issued
22 under 85-1-617;
23 (c) all interest income earned on proceeds of water
24 development bonds; and
25 (d) revenue or money otherwise required to be paid

1 into the water development state special revenue account
2 pursuant to 85-1-604, as determined by the board of
3 examiners in connection with the issuance of bonds pursuant
4 to 85-1-617."

5 Section 3. Section 90-2-124, MCA, is amended to read:

6 "90-2-124. Appropriation of coal severance tax. The
7 state pledges and appropriates and directs to be credited to
8 the debt service fund, as received, 1 1/4% of all money from
9 time to time received from the collection of the severance
10 tax and remaining after allocation of such tax to-the-trust
11 fund--established--under--section-57--Article--IX7--of--the--Montana
12 constitution under 15-35-108(1) and (2) and such additional
13 amount thereof, if any, as may be required from time to time
14 to provide sufficient funds for the purposes stated in
15 90-2-123(2), provided that no more than 1 1/4% of such tax
16 collections shall be deemed to be pledged for the purpose of
17 90-2-121(3)."

-End-

1 Income from this trust fund shall be appropriated as
2 follows:

3 (i) 1/3 for protection of works of art in the state
4 capitol and other cultural and aesthetic projects; and
5 (ii) 2/3 for the acquisition, development, operation
6 and maintenance of any sites and areas described in
7 23-1-102;

8 (g) 1% to the state special revenue fund to the credit
9 of the state library commission for the purposes of
10 providing basic library services for the residents of all
11 counties through library federations and for payment of the
12 costs of participating in regional and national networking;
13 (h) 1/2 of 1% to the state special revenue fund for
14 conservation districts;

15 (i) 1 1/4% to the debt service fund type to the credit
16 of the water development debt service fund;

17 (j) 4% until July 1, 1987, to the highway
18 reconstruction trust fund account in the state special
19 revenue fund;
20 (k) 5% until July 1, 1989, and thereafter 10% to the
21 state special revenue fund to the credit of the coal
22 research and development account. The legislature may
23 appropriate money from the coal research and development
24 account up to:

25 (l) 2/5 to the Montana science and technology

1 development board established by 2-15-1810 for technology
2 investments in technology development projects as provided
3 in 90-3-203;
4 (iii) 2/5 for use by the Montana coal laboratory within
5 the Montana university system to sponsor research in the
6 characterization, production, processing, marketing, and use
7 of Montana coal and derivative products, provided at least
8 one-third of the total program funds is made available from
9 private and other sources; and
10 (iv) 1/5 to a center for future studies within the
11 Montana university system;

12 (f)(1) all other revenues from severance taxes
13 collected under the provisions of this chapter to the credit
14 of the general fund of the state."

15 NEW SECTION. Section 2. Account established. There is
16 within the state special revenue fund a coal research and
17 development account.

18 NEW SECTION. Section 3. Codification instruction.

19 Section 2 is intended to be codified as an integral part of
20 Title 20, chapter 25, part 1.

21 NEW SECTION. Section 4. Effective date. This act is
22 effective July 1, 1987.

-End-



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